

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

HUMANA INC. *and* AMERICANS FOR
BENEFICIARY CHOICE,

Plaintiffs,
v.
U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,
Defendants.

Case No. 24-cv-01004-O

**PLAINTIFFS' REPLY IN SUPPORT OF ITS MOTION REQUESTING ORAL
ARGUMENT ON THE PENDING CROSS-MOTIONS FOR SUMMARY JUDGMENT**

In response to our motion for an oral hearing, defendants assert that the motion is “unnecessary” because Local Rule 7.1(g) specifies that no oral argument will be held “[u]nless otherwise directed by the presiding judge.” That has matters backward. When a party believes that there are special reasons warranting a hearing and that oral argument would benefit both the parties and the Court, it is appropriate to file a motion that brings those reasons to the Court’s attention. The fact that, under Local Rule 7.1(g), no argument otherwise will be held *necessitates* the motion, not the other way around.

Defendants also characterize the motion as an improper surreply on the merits. That is incorrect. Our view is that a hearing would be helpful to the Court because defendants’ reply brief contains surprising arguments and inaccurate assertions that touch on matters critical to the proper administration of the Medicare Advantage program. Yet defendants’ arguments confuse the issues rather than clarify them. In our motion, we offered three very brief examples substantiating this point. Each of the three examples comprises just a

handful of sentences, and each concludes with an explanation of how a hearing would help to clear up the apparent confusion or inconsistencies. Moreover, the three briefly-described examples are only the tip of the iceberg—the motion does not even mention, let alone address, the bulk of defendants' reply brief, which contains many other problematic arguments. That is why we respectfully submit that a hearing is warranted in this case.

Dated: March 13, 2025

Respectfully submitted,

/s/ Michael B. Kimberly

Michael B. Kimberly* (D.C. No. 991549)

Kate McDonald* (D.C. No. 998233)

Caleb H. Yong* (D.C. No. 1780922)

Nicole E. Wittstein* (D.C. No. 1725217)

McDermott Will & Emery LLP

500 North Capitol Street NW

Washington, D.C. 20001

(202) 756-8901

Richard Salgado (Texas No. 24060548)

McDermott Will & Emery LLP

2501 North Harwood Street, Suite 1900

Dallas, TX 75201-1664

(214) 210-2797

* *pro hac vice*

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

Undersigned counsel certifies that a true and correct copy of this document was served via CM/ECF on all counsel of record pursuant to the Federal Rules of Civil Procedure on March 13, 2024.

/s/ Michael B. Kimberly